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IN THE
COURT OF APPEALS OF INDIANA

THE KROGER COMPANY,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 93A02-0611-EX-975
	)	
ROBERT QUICK,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE FULL WORKER'S COMPENSATION BOARD
The Honorable Linda Hamilton, Chairman
Application No. C-169144

June 13, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

The Kroger Company ("Kroger") appeals the decision of the Indiana Worker's Compensation Board ("the Board") to reverse a single hearing member's decision terminating Kroger's worker's compensation liability to its employee, Robert Quick. We remand.

Issue

The sole issue we address is whether the Board's findings in reversing the single hearing member's decision are sufficient.

Facts

On July 28, 2003, Quick injured his back while working at Kroger. On July 30, 2003, Quick again was involved in an incident that caused pain to his back, this time at the Shelby County courthouse. On August 26, 2003, Kroger determined that it would not offer any worker's compensation for treatment for Quick's back after the second incident. On March 11, 2004, Quick filed an application for adjustment of claim with the Board.

On August 30, 2005, a single hearing member entered the following findings and conclusions regarding Quick's claim:

FINDINGS

1. As stipulated, Quick sustained a lower back injury within the course and scope of his employment on July 28, 2003.

2. Quick was stocking in Kroger's dairy department when he pulled a stack of milk crates forward and had a pop in his back.

3. Quick was sent to the emergency room in Shelbyville where the store is located.

4. X-rays were taken and a diagnosis of lumbar strain was made.

5. On July [29], 2003, Quick was treated by a nurse practitioner at Health Works. "Radiographic studies were indicative of some degenerative changes at L3-L4, but no acute bony injury."

6. On July 30, 2003, Quick went to the Shelby County Courthouse to attend a hearing with his wife. Something occurred as Quick attempted to enter the building. Quick's counsel addressed this in his brief:

> "There is a difference of opinion as to why the Plaintiff was on his sacrum at the time of the incident on 07/30/03. The Plaintiff's opinion is that he was going up a flight of stairs at the Shelby County Courthouse and, as he was ascending the stairs, he held onto the handrail but could not lift his leg and, then, turned around, sat down on the stairs on or near his sacrum, and then got back up and ascended the stairs in reverse. Another opinion is that the Plaintiff was at the courthouse and as he was walking up the steps his left leg gave out and he fell onto his buttocks. Another opinion is that the Plaintiff was at the courthouse and 'his left leg would not hold him, he went to the ground and had to sit there for some time, but later managed to get into the courthouse 'with pain'. However, these difference of opinion make little difference in that the Plaintiff sat or fell on or near his sacrum or on his buttocks. (Citations omitted)."

7. At Quick's deposition, he testified that he had "scooted" himself up the stairs backwards.

8. At the time Quick was approximately five feet seven inches tall and weighed 249 pounds.

9. Some of the medical records refer to a fall;

Major Hospital Emergency Room July 30, 2003:

> "States fell approximately 1 PM (unintelligible) missed stip [sic] & fell onto sacrum. C/o lower back pain. States has old back strain injury from work incident." (At this visit, x-rays were taken of the Plaintiff which showed the lumbar spine was stable with no significant interval changes when compared with 7/28/03 and the Plaintiff was given medications.")

The records of Practitioner Green August 1, 2003:

> "He was seen and evaluated the day of this injury on July 31, 2003. Repeat x-rays of the lumbar and pelvis were unremarkable. There was no evidence of fracture in the sacrum or coccyx from the fall."

10. Quick by counsel argues such references show he was not more "disabled" by the July 30, 2003 incident than he was on July 28, 2003, thus concluding there was no intervening injury.

11. However, Quick ultimately had surgery for herniated disks and the absence of a sacrum or coccyx fracture is tangential to the condition of his lumbar spine.

12. Quick continued to experience pain and on August 1, 2003 reported to Practitioner Green that his pain had increased at the posterior aspect of the left hip and his left lateral thigh. He has a sensation of numbness along the left lateral thigh as well.

13. Such references coupled with the need for emergency evaluation show the courthouse fall was a significant event, one that likely was more serious than the work injury, and an event that increased his symptoms.

14. In fact, Quick testified he could not rise when the Hearing Judge entered the court on July 30, 2003.

15. An MRI was done September 7, 2003, showing:

> L3-4: Mild disc space height loss, marginal sclerosis, and disc dehydration. Mild left lateral disc bulge with resultant narrowing of the left neural foramen. No herniated nucleus pulposus. L4-5: Mild disc space height loss and marginal sclerosis. Left lateral disc bulge with resultant mild narrowing of the left neural foramen. No focal herniated nucleus pulposus. L5-S1: DIs dehydration. Mild diffuse disc bulge. No facal herniation."
>
> 16. On September 18, 2003, Dr. Bartley interpreted the MRI as showing nerve root impingement.
>
> 17. Quick ultimately had surgery after epidurals, medication and activity modification were unsuccessful.
>
> 18. On April 12, 2004, Dr. Bartley performed a lumbar laminectomy with discectomy L4-5, left side.
>
> **CONCLUSIONS**
>
> 1. Quick sustained a superceding intervening injury on July 30, 2003, when he fell at the Shelby County Courthouse.
>
> 2. Kroger's liability was terminated by the intervening injury.

App. pp. 8-11.

Quick sought review of the single hearing member's decision before the Board. After conducting a hearing, on October 5, 2006, the Board issued an order reversing the single hearing member's decision and remanding for further proceedings. The Board did not issue findings of its own. Instead, it simply "modified" the findings of the single hearing member by deleting findings eleven and thirteen. Id. at 5. It also "modified" the conclusions so that they now read:

> 1. Quick did not sustain a superceding intervening injury on July 30, 2003, when he fell at the Shelby County Courthouse.
>
> 2. Kroger's liability was not terminated by the intervening injury.

Id. Kroger now appeals the Board's decision.

Analysis

The central contested issue in this case that the Board had to resolve was whether any incident on July 30, 2003, constituted a superceding, intervening injury that terminated Kroger's liability for any injury arising out of the July 28, 2003 workplace incident.[1] Some time ago, this court explained:

> It seems to be well settled that a subsequent incident or accident which results in a new, different or additional injury is compensable if it is of such nature and occurs under such circumstances that it can be considered as the proximate and natural result of the original injury. . . . "It is well settled that where the primary injury arises out of the employment, every consequence which flows from it likewise arises out of the employment."
>
> On the other hand the subsequent incident or accident may be such as to constitute an independent intervening agency which breaks the chain of causation between the two injuries and relieves the employer of responsibility for the latter. . . . And this is true even though the first injury may have contributed to the second accident to some extent. "Cases may arise where the elements of time and space and intervening causes may be so involved that the second injury could not be said to be the proximate, natural, and probable result of the original accident, or the second accident may so predominate that it overshadows the original cause." Lack of

[1] It appears there was some evidence Quick might have had other back problems not related to the July 28, 2003 workplace injury. This appeal, however, solely concerns whether the July 30, 2003 courthouse incident automatically terminated any further worker's compensation liability on Kroger's part.

> ordinary care on the part of the claimant which proximately results in the second accident has been held to constitute an independent intervening agency which breaks the chain of causation between the two injuries and thus bars recovery for the second.
>
> Whether the second accident, in the case before us, was the proximate and natural result of the original injury or whether it was the proximate result of the appellant's negligence and therefore should be regarded as an independent intervening cause, was a question of fact for the Industrial Board, to be decided in view of all the circumstances, and its findings in that regard must be sustained, even though the evidence is undisputed, if there is any legitimate theory applicable to the facts on which the award can be upheld.

Yarbrough v. Polar Ice & Fuel Co., 118 Ind. App. 321, 324-25, 79 N.E.2d 422, 423-24 (1948) (citations omitted). We have recently upheld the continuing viability of Yarbrough. See Indiana State Police v. Wiessing, 836 N.E.2d 1038, 1046-47 (Ind. Ct. App. 2005), trans. denied. There, we upheld the Board's decision to award compensation in connection with a police officer's suicide, where there were evidence and findings in the record to support the conclusion that it was causally connected to the officer's post-traumatic stress disorder that had arisen after a police action shooting. Id. at 1047-48. See also Joseph E. Seagram & Sons, Inc. v. Willis, 401 N.E.2d 87, 90 (Ind. Ct. App. 1980).

Here, we find it impossible to determine whether the Board found in Quick's favor in accordance with the principles announced in Yarbrough and similar cases. The Board has the duty, as trier of fact, to make findings that reveal its analysis of the evidence and are specific enough to permit intelligent review of the Board's decision. Van-Scyoc v. Mid-State Paving, 787 N.E.2d 499, 506 (Ind. Ct. App. 2003). "'Specific findings of basic

fact must reveal the Board's determination of the various relevant sub-issues and factual disputes which, in their sum, are dispositive of the particular claim or ultimate factual question before the Board.'" Id. (quoting Outlaw v. Erbrich Prods. Co., 742 N.E.2d 526, 530-31 (Ind. Ct. App. 2001)).

The Board's findings must supply the reader with an understanding of its reasons, based on the evidence, for its finding of ultimate fact. Id. "When the findings of fact are straightforward and detailed, the Board's position is bolstered; however, when the Board's findings are vague and incomplete, it results in guesswork on the part of the readers of the decision." Id. The more complex or technical the sub-issues or factual disputes are, the greater the particularity that is needed to satisfy the fact-finding requirement. Id.

Based on the evidence, it seems there are three possible versions of what happened on July 30, 2003. First is the possibility that, fall or no fall, Quick did not do anything to aggravate his pre-existing workplace injury. Second is the possibility that Quick fell on the stairs and aggravated that injury because of pain or numbness in his left leg that was directly related to the workplace injury. Third is the possibility that Quick fell due to misjudgment or negligence in climbing the stairs and that this had no connection to the workplace injury. Compensation might be appropriate in the first two scenarios but not in the third.

However, we do not know how the Board reached its conclusion that the July 30, 2003 incident did not cause a superceding, intervening injury. In fact, we can ascertain neither how the single hearing member determined that there was a superceding injury,

nor how the Board determined that there was not a superceding injury. The findings in large part relate what evidence was presented before the hearing member and the Board, but take no position on what evidence was credited. The most glaring example of this is the recitation of multiple versions of precisely what happened on July 30, 2003—i.e., whether or not Quick fell, and if he fell, why—but neither the single hearing member nor the Board resolved these discrepancies. Additionally, reciting that Quick's lawyer argued that the July 30, 2003 incident did not constitute an intervening injury is not a finding of any kind.

Our supreme court has stated:

> [S]tatements to the effect that "the evidence revealed such and such ...," that "Mr. Jones testified so and so ...," or that "the Industrial Board finds Dr. Smith testified so and so ...," are not findings of basic fact in the spirit of the requirement. Statements of that nature lend perspective to our task, but in no way indicate what the Board found after examining all the evidence.

Perez v. U.S. Steel Corp., 426 N.E.2d 29, 33 (Ind. 1981). The findings as a whole in this case suffer from precisely this defect. We have some idea of what evidence was presented to the single hearing member and Board but little clue as to what they found. Thus, we must remand for the Board to enter adequate, more specific findings explaining its decision. See Van-Scyoc, 787 N.E.2d at 508.

Conclusion

We remand for further proceedings consistent with this opinion.

Remanded.

NAJAM, J., and RILEY, J., concur.